

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OSVALDINA LIMA,

Plaintiff,

V.

WACHOVIA MORTGAGE CORPORATION, et al.,

Defendants.

NO. C09-04798 TEH

**ORDER FOR SUPPLEMENTAL
BRIEFING RE DEFENDANT'S
MOTION FOR ATTORNEYS'
FEES**

This matter is before the Court on the motion for attorneys' fees filed by Defendant Wachovia Mortgage FSB ("Wachovia"). Wachovia asserts that it is entitled to attorneys' fees as the prevailing party in this action pursuant to provisions of the promissory note and deed of trust entered into by Plaintiff Osvaldina Lima ("Lima"). Wachovia argues that state law governs a party's right to attorneys' fees for state law claims, *MRO Commc'ns, Inc. v. AT&T Co.*, 197 F.3d 1276, 1280-82 (9th Cir. 1999), and that California law allows for the award of attorneys' fees where authorized by contract, Cal. Code Civ. Proc. §§ 1021 & 1033.5(a)(10).

However, Lima's complaint asserted violations of two federal statutes: the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1635, 1640, and the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2603. Jurisdiction was premised on the existence of a federal question, and no claims were asserted under state law. The basis for Wachovia's assertion that state law governs this motion is therefore unclear. If state law is inapplicable, Wachovia has provided no federal authority that would justify the attorneys' fee award it requests on this motion.

The Court therefore VACATES the hearing that had been set for May 3, 2010, and requests supplemental briefing on this issue. No later than **May 3, 2010**, Wachovia shall file

1 a brief not to exceed seven pages explaining the basis for its contention that California law
2 governs this motion. If Wachovia concedes that California law is inapplicable, the
3 supplemental brief shall set out the appropriate standard under federal law, and apply that
4 standard to the instant motion. Lima shall file a response to Wachovia's supplemental brief,
5 not to exceed seven pages, by **May 10, 2010**.

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7 **IT IS SO ORDERED.**

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9 Dated: 4/26/10

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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT